BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

J. BERT SONNIER
(Petitioner)

PRECEDENT
TAX DECISION
No. P-T-148
Case No. T-72-41

Employer Account No.

DEPARTMENT OF HUMAN
RESOURCES DEVELOPMENT

The petitioner has appealed from Referee's Decision No. S-T-4900 which denied the petition for reassessment filed by the petitioner under the provisions of Unemployment Insurance Code section 1133.

STATEMENT OF FACTS

During the period under review which extends from April 1, 1969 through June 30, 1970, the petitioner was a trainer of thoroughbred racing horses. He directed and controlled the training of a group of about 25 horses at whatever track they happened to be racing. His operation moved with the horses.

During this period he operated at Hollywood Park Race Track in Inglewood, California; the Saratoga Race Track in Saratoga, New York; the Belmont Race Track on Long Island, New York; the Monmouth Park Race Track near Long Branch, New Jersey; and the Santa Anita Race Track in Arcadia, California.

Around April 15, 1969, the petitioner engaged Lawrence E. Sullivan as a groom for his race horses. Sullivan's duties included the care, custody, control and grooming of these valuable animals. At the time he was engaged, Sullivan was a resident of Inglewood, California and did not establish any other permanent residence.

At the various race tracks, Sullivan lived in the tack rooms provided for the trainers and their help. He received his instructions from the petitioner, or occasionally from an assistant trainer, John Friedhoff. Between race tracks, he traveled on the planes with the horses, his expenses being paid by the petitioner or by the owner of the horses.

Sullivan's paychecks were hand delivered to him by the petitioner at whatever location he happened to be at the time. They were personal checks drawn on banks in either Michigan or Louisiana. There is no indication that Sullivan performed any services for the petitioner in either of these states.

Sullivan's services were terminated by the petitioner at the Santa Anita Race Track around April 15, 1970. It is customary when a groom is discharged for the trainer to pay the expenses of returning the groom to the place where he was employed.

The petitioner acknowledges liability to California for unemployment insurance contributions on wages paid to Sullivan during the second calendar quarter of 1969 and the first calendar quarter of 1970. This was the period during which the petitioner operated in California. The petitioner contends that the assessment for periods that he operated outside the state of California is erroneous.

## REASONS FOR DECISION

Each of the states in our country has its own unemployment insurance law. In the course of business, however, many an employer utilizes the services of a particular employee in two or more states. Thus, there is present the potential for conflicts between states over whose unemployment insurance law covers the multistate worker, and to what extent.

To minimize such conflicts and simplify administration of the program, the various states at the suggestion and under the leadership of the federal government, have adopted a set of relatively uniform laws regarding the coverage of individuals whose services are rendered in two or more states. Each state's law is its own, but in

combination the several states assert and yield their jurisdiction over multistate workers in such a way as to create a harmonious overall pattern. Omission and duplication of coverage are reduced to a minimum, and the attempt is made to center the coverage of the worker in the one state in which it would be most likely that he would seek work if he became unemployed. (Claim of Kunz (1968), 30 App. Div. 2d 459, 294 N.Y. Supp. 2d 103)

All this is accomplished by each state adopting a similar definition of "employment" as it applies to the multi-state worker. The definition is based upon four principles which are considered in an order of preference. This means that if the multistate worker's services become "employment" in a single state under the first principle of "localization of the work," we do not proceed further. If they do not, we proceed to test them by the second principle of "base of operations." If neither the first nor second principle defines the services as "employment" in a single state, we proceed to the third principle of "place of direction and control," and likewise if necessary to the fourth principle of "place of residence" of the worker.

These four principles as applicable to us are set forth in Unemployment Insurance Code section 602, which defines "employment" taxable by California as including certain services performed outside of this state. It should be noted that between the application of each principle, there is a gap in California coverage to permit the corresponding law of some other state to intervene and claim the worker on the level of that principle before one of lower priority is applied. This gap is an essential part of the harmonious pattern of these laws.

The four principles of code section 602 under which service performed outside of California may become taxable in this state can be summarized and explained in the following manner:

1. Service outside of California may constitute "employment" taxable here where the individual's service was "localized" in this state. This means that any service performed by the individual outside California was incidental to the service which he performed within this state, as, for example, where the out-of-state service

was temporary or transient in nature, or consisted of isolated transactions. Where the service performed outside of the state was either permanent, substantial, or unrelated, it cannot be treated as localized here. Stevens v. Minnesota Division of Employment Security (1940), 207 Minn. 429 at pages 431 and 432, 291 N.W. 890 at page 891; Puget Sound Bridge and Dredging Co. v. State Unemployment Compensation Commission (1942), 168 Ore. 614 at pages 622 and 623, 126 P. 2d 37 at page 41; Claim of Mallia (1949), 299 N.Y. 232 at page 239, 86 N.E. 2d 577 at page 580, 9 A.L.R. 2d 636 at page 643; Claim of Krant (1952), 280 App. Div. 845 at page 845, 113 N.Y. Supp. 2d 427 at page 428; In re Barry Wine Co. (1954), 283 App. Div. 1131 at page 1132, 131 N.Y. Supp. 2d 601 at page 602; Douglas Aircraft Company v. California Unemployment Insurance Appeals Board (1961), Los Angeles County Superior Court No. 711115, C.C.H. Unemp. Ins. Rep. Calif. par. 8006 at page 8681; Matter of Boyle (1962), 15 App. Div. 2d 699 at pages 699 and 700, 223 N.Y. Supp. 2d 370 at page 371.

2. If the individual's service was not "localized" in California, or in any other "state" (as that term is defined in Unemployment Insurance Code section 139), then his service outside of California may still be "employment" taxable here if some of his service was rendered in California and if his own and only "base of operations" for all of his service was also in this state. An individual's "base of operations" is a more or less permanent place from which he starts his work and to which he customarily returns to receive his employer's instructions, or to receive communications from customers or others, or to replenish stocks or supplies, repair equipment, or perform other functions relating to the rendition of his services. Puget Sound Bridge and Dredging Co. v. State Unemployment Compensation Commission (1942), supra, 168 Ore. 614 at pages 623 and 624, 126 P. 2d 37 at page 41; Claim of Mallia (1949),

supra, 299 N.Y. 232 at pages 239 and 240, 86 N.E. 2d 577 at page 581, 9 A.L.R. 2d 636 at page 643; Collins v. Administrator, Unemployment Compensation Act (1950), 136 Conn. 387 at pages 390 and 391, 71 A. 2d 604 at page 606.

3. If the individual's service was not "localized" in California, or in any other "state," and if he did not have his own and only "base of operations" for all of his service in any "state" in which some portion of his service was rendered, then his service outside of California may still be "employment" taxable here, if some of his service was rendered in California and if the "place from which his service was directed and controlled" was also within this state. This means one single place which was the source from which there emanated a basic and general direction and control which was exercised over all of the individual's service. Claim of Mallia (1949), supra, 299 N.Y. 232 at pages 240 and 241, 86 N.E. 2d 577 at page 581, 9 A.L.R. 2d 636 at pages 643 and 644; In re Burke (1943), 267 App. Div. 127 at page 130, 45 N.Y. Supp. 2d 461 at page 464 (subject to the comments of the Court in Claim of Mallia, supra); In re Barry Wine Co., Inc. (1954), supra, 283 App. Div. 1131 at page 1132, 131 N.Y. Supp. 2d 601 at pages 602 and 603; Claim of Pratt (1955), 285 App. Div. 1105 at page 1105, 139 N.Y. Supp. 2d 322 at pages 323 and 324; Claim of Kunz (1968), supra, 30 App. Div. 2d 459, 294 N.Y. Supp. 2d 103.

4. If the individual's service was not "localized" in California, or in any other state, and if he did not have either his own and only "base of operations" for all of his service, or any single place from which a basic and general control was exercised over all of his service, in any state in which some portion of his service was rendered, then his service outside of California may still be "employment" taxable here, if some of his service was rendered

> in California and if his residence was in this state. In this sense, residence means having a more or less permanent place of abode at a place where some of the work was carried on. It imports more than a mere transient stopover, but it does not require the intent necessary to establish a permanent residence in the domiciliary sense. Claim of Mallia (1949), supra, 299 N.Y. 232 at page 241, 86 N.E. 2d 577 at page 581, 9 A.L.R. 2d 636 at page 644; Claim of Harr (1954), 284 App. Div. 1082 at page 1082, 135 N.Y. Supp. 2d 920 at pages 920 and 921; Douglas Aircraft Company v. California Unemployment Insurance Appeals Board (1961), supra, Los Angeles County Superior Court No. 771115, C.C.H. Unemp. Ins. Rep. Calif. par. 8006 at page 8681.

An individual's service outside of California cannot become "employment" taxable here under the foregoing provisions unless some portion of the service was rendered in this state. Likewise, the California portion of an individual's service will not become "employment" taxable here if some portion of the service was rendered in another "state" in which all of his service then becomes "employment" in that state under its companion provision of law by virtue of its "localization," "base of operations," "place of direction and control" or "residence" rules. A few situations, however, do arise beyond the scope of these rules, where no portion of the service is rendered in the state which would otherwise be identified for the coverage of the worker's entire service.

We need not concern ourselves here with these latter situations, since some portion of Sullivan's service as a groom was performed in California which was also his state of residence. This is sufficient to assure that the foregoing provisions will produce a solution to the problem. For reference, however, we call attention to code sections 601, 603.5, 609 and 610 in those situations where such is not the case.

The foregoing rules are all subject to variation by reciprocal arrangements entered into between this state and any other state or the federal government under the provisions of code section 454. No such reciprocal

arrangements affecting the matter at hand have been brought to our attention. They are also subject to variation by treaties of the United States with foreign nations, but again no such treaties have been brought to our attention in these proceedings.

Let us proceed to consider then what state the multistate employment principles identify as the proper one for the coverage of Sullivan's entire service as a groom for petitioner. Clearly his service in each of the three states involved was substantial. From the point of view of any one of the three states, it cannot be said that the service outside of its borders was temporary or transient in nature, or consisted of isolated transactions. The service, therefore, was not "localized" in any one state.

Nor was there a single "base of operations" for all of Sullivan's service in any one state. His base shifted with his work from race track to race track and from state to state. None of the three states in which Sullivan rendered some portion of his service can lay any claim to all of it under this principle.

The same problem exists in identifying a single place of direction and control. This followed the petitioner's person as he moved his operation with the horses. Again none of the three states can lay any claim to all of Sullivan's service under this principle.

Finally, we come to the "place of residence" of the worker. There is no dispute in the evidence that Sullivan was a resident of Inglewood, California. He performed some portion of his service in this state. These two factors taken together are sufficient at this point to identify California as the state which should tax all of Sullivan's service as employment. No other state can make a comparable claim to this right.

The mathematical calculation of the assessment is not disputed. In these proceedings we have no jurisdiction to review wage-item penalties added under code section 1114. We hold, therefore, that the assessment is proper as made.

DECISION

The decision of the referee is affirmed.

Sacramento, California, September 19, 1972

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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